



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALTON D. STOWERS,

Plaintiff,

v.

DEPUTY MACIAS, et al.,

Defendants.

Case No. EDCV 18-1530 ODW (SS)

MEMORANDUM AND ORDER

DISMISSING COMPLAINT WITH

LEAVE TO AMEND

I.

INTRODUCTION

On July 5, 2018, Plaintiff Alton D. Stowers, a California state prisoner proceeding pro se, constructively filed a civil rights complaint pursuant to 42 U.S.C. § 1983.¹ ("Compl.," Dkt. No. 1). Congress mandates that district courts perform an initial

¹ The "mailbox rule" announced by the Supreme Court in Houston v. Lack, 487 U.S. 266 (1988), applies to § 1983 cases. See Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009). Pursuant to the mailbox rule, pro se prisoner legal filings are deemed filed on the date the prisoner delivers the document to prison officials for forwarding to the court clerk. Id. The Court adopts the date on the proof of service attached at the end of the Complaint as this action's constructive filing date.

1 screening of complaints in civil actions where a prisoner seeks
2 redress from a governmental entity or employee. 28 U.S.C.
3 § 1915A(a). This Court may dismiss such a complaint, or any portion
4 thereof, before service of process if the complaint (1) is
5 frivolous or malicious, (2) fails to state a claim upon which
6 relief can be granted, or (3) seeks monetary relief from a defendant
7 who is immune from such relief. 28 U.S.C. § 1915A(b)(1-2); see
8 also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000)
9 (en banc). For the reasons stated below, the Complaint is DISMISSED
10 with leave to amend.²

11 12 II.

13 ALLEGATIONS OF THE COMPLAINT

14

15 Plaintiff sues three Moreno Valley law enforcement officers,
16 (1) Deputy Macias, (2) Deputy Kennedy, and (3) Sergeant Medeiros
17 (collectively, the "MV Defendants"); (4) the County of Riverside
18 (the "County");³ (5) Walgreens Corporation ("Walgreens"); and

19
20 ² A magistrate judge may dismiss a complaint with leave to amend
21 without the approval of a district judge. See McKeever v. Block,
22 932 F.2d 795, 798 (9th Cir. 1991) ("[T]he dismissal of a complaint
23 with leave to amend is a non-dispositive matter."). Consistent
24 with McKeever, the Court concludes that its Order Dismissing
25 Complaint with Leave to Amend is a non-dispositive Order. However,
26 pursuant to Federal Rule of Civil Procedure 72, if Plaintiff
27 disagrees, he may file an objection with the District Judge. See
28 Bastidas v. Chappell, 791 F.3d 1155, 1162 (9th Cir. 2015); see also
Hunt v. Pliler, 384 F.3d 1118, 1124 (9th Cir. 2004) ("District
court review of even these nondispositive matters . . . can be
compelled upon objection of the party against whom the magistrate
has ruled.") (quoting McKeever, 932 F.2d at 798).

³ According to the City of Moreno Valley website, the City
"contracts police services from the Riverside County Sheriff's

1 (6) Riverside University Health Systems ("RUHS").⁴ All Defendants
2 are sued in both their individual and official capacities. (Compl.
3 at 2).

4
5 According to the Complaint, on November 28, 2017, Plaintiff
6 went to Walgreens to purchase a cell phone. (Id. at 3). As
7 Plaintiff was standing in line to make his purchase, he experienced
8 a "mental health moment" in which he "thought someone was going to
9 kill [him]." (Id.). Plaintiff used the store phone without
10 permission to call dispatch for help. (Id.). While Plaintiff was
11 on the phone, two officers entered the store, approached him, and
12 hung up the phone he was using. (Id.).

13
14 One of the officers told Plaintiff to put his belongings down
15 and to put his hands behind his back. (Id.). Plaintiff told the
16 officers that because he had been on the phone with the police,
17 they must not be real police officers. (Id.). At that point, the
18 officers attempted to arrest him. (Id.). Plaintiff put his hands
19 straight up in the air and began backing away from the officers.

20
21 Department." (See [http://www.moreno-valley.ca.us/city_hall/](http://www.moreno-valley.ca.us/city_hall/departments/police/index-police.shtml)
22 [departments/police/index-police.shtml](http://www.moreno-valley.ca.us/city_hall/departments/police/index-police.shtml)); see also Shaw v. Hahn, 56
23 F.3d 1128, 1129 n.1 (9th Cir. 1995) (the court may take judicial
24 notice of matters of public record).

25
26 ⁴ "Riverside University Health System (RUHS) includes the 439-bed
27 Medical Center in Moreno Valley, 10 Federally Qualified Health
28 Centers and several primary and specialty clinics throughout
Riverside County, and the departments of Behavioral and Public
Health." (See <http://www.ruhealth.org/en-us/Pages/why-ruhs.aspx>).
It is operated by the County of Riverside. (See, e.g.,
<https://www.countyofriverside.us/MobileApp/Health.aspx>) (noting
that RUHS-Public Health "is Riverside County's public health
department").

1 (Id.). The last thing Plaintiff remembers is that he was on the
2 ground and was beaten until he was unconscious. (Id.).
3

4 When Plaintiff came to, he was at RUHS, where he learned that
5 he had sustained severe trauma to his body, including two failing
6 kidneys caused by the beatings. (Id. at 4). As a result of the
7 beating, Plaintiff now suffers periodically from "the shakes" and
8 has a "growing fear of the police." (Id.).
9

10 Plaintiff's sole claim alleges that Defendants collectively
11 violated his Fourteenth Amendment [sic] right to be free from
12 excessive force. Plaintiff seeks an injunction requiring the MV
13 Defendants, the County, Walgreens, and RUHS to "stop the use of
14 'Excessive Force' and covering up of documents that help/aid
15 individuals in a community setting." (Id. at 5). Plaintiff also
16 seeks compensatory damages of \$9,000,000 and punitive damages of
17 \$100,000 "against each defendant, jointly and severally." (Id.).
18

19 III.

20 DISCUSSION

21
22 Under 28 U.S.C. § 1915A(b), the Court must dismiss the
23 Complaint due to pleading defects. However, the Court must grant
24 a pro se litigant leave to amend his defective complaint unless
25 "it is absolutely clear that the deficiencies of the complaint
26 could not be cured by amendment." Akhtar v. Mesa, 698 F.3d 1202,
27 1212 (9th Cir. 2012) (citation and internal quotation marks
28 omitted). For the reasons discussed below, it is not "absolutely

1 clear" that at least some of the Complaint's defects could not be
2 cured by amendment. The Complaint is therefore DISMISSED with
3 leave to amend.

4
5 **A. The Complaint Fails To State A Claim Against The MV Defendants**

6
7 Section 1983 provides a cause of action against any "person"
8 who, under color of law, deprives an individual of federal
9 constitutional rights or limited federal statutory rights. 42
10 U.S.C. § 1983. The term "person" includes state and local officials
11 sued in their individual capacities and local governments. Cortez
12 v. Cnty. of Los Angeles, 294 F.3d 1186, 1188 (9th Cir. 2002); Vance
13 v. Cnty. of Santa Clara, 928 F. Supp. 993, 995-96 (N.D. Cal. 1996).
14 To establish a civil rights violation, a plaintiff must show either
15 the defendant's direct, personal participation in the
16 constitutional violation, or some sufficient causal connection
17 between the defendant's conduct and the alleged violation. See
18 Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011).

19
20 **1. Deputies Macias And Kennedy**

21
22 The Complaint alleges that "2 officers entered the front door
23 [at Walgreens] and approached [him]," (Compl. at 3), but names
24 three individual MV Defendants -- Deputies Macias and Kennedy and
25 Sergeant Medeiros -- as the "arresting officers." (Id. at 2). It
26 is therefore unclear whether Deputies Macias and Kennedy were the
27 "2 officers [who] entered the store." Even if they were, the
28 Complaint fails to describe what each officer separately did to

1 violate Plaintiff's rights. Exhibit C, a single page from an
2 unidentified document, states that Deputy Macias sustained an
3 injury when Plaintiff struck him with his elbow, which suggests
4 that Deputy Macias was directly involved in the incident. However,
5 Plaintiff may not simply attach exhibits to his pleading without
6 explanation in the hope that Defendants might be able to guess why
7 he believes they violated his civil rights. Without more specific
8 allegations describing each Defendant's individual acts and
9 omissions, Plaintiff has not plausibly pled that Deputies Macias
10 and Kennedy were personally involved in violating his rights or
11 that their actions had any causal connection to the purported
12 constitutional violations. Accordingly, the Complaint is
13 dismissed, with leave to amend.

14 15 **2. Sergeant Medeiros**

16
17 It is not clear whether Plaintiff is contending that Sergeant
18 Medeiros is liable because he personally participated in
19 Plaintiff's detention inside Walgreens, or because he supervised
20 Deputies Macias and Kennedy. The Complaint's failures to
21 adequately plead the direct participation of Deputies Macias and
22 Kennedy in the constitutional violation apply to Sergeant Medeiros
23 as well. To the extent that Plaintiff is attempting to allege in
24 the alternative that Sergeant Medeiros is liable in his role as a
25 supervisor, Plaintiff is advised that government officials may not
26 be held liable under § 1983 simply because their subordinates
27 engaged in unconstitutional conduct. See Ashcroft v. Iqbal, 556
28 U.S. 662, 676 (2009).

1 Where a plaintiff names a supervisor as a defendant but does
2 not allege that the supervisor directly participated in the
3 constitutional violation, a "sufficient causal connection" to the
4 violation may be shown where the supervisor "set 'in motion a
5 series of acts by others, or knowingly refused to terminate [such
6 acts], which he knew or reasonably should have known, would cause
7 others to inflict the constitutional injury.'" Levine v. City of
8 Alameda, 525 F.3d 903, 907 (9th Cir. 2008) (quoting Larez v. City
9 of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)); see also
10 Preschooler II v. Clark County Bd. of Trustees, 479 F.3d 1175, 1183
11 (9th Cir. 2007) (a supervisor may be held accountable only "for
12 his own culpable action or inaction in the training, supervision,
13 or control of his subordinates, for his acquiescence in the
14 constitutional deprivations of which the complaint is made, or for
15 conduct that showed a reckless or callous indifference to the
16 rights of others").

17
18 To state a claim against Sergeant Medeiros, Plaintiff must
19 show either that he directly participated in the constitutional
20 violation or that his acts or omissions in the training or
21 supervision of his subordinates had a causal connection to the
22 injury Plaintiff suffered. The Complaint does neither.
23 Accordingly, the Complaint is dismissed, with leave to amend.

24
25 **B. The Complaint Fails To State A Claim Against The County**

26
27 Plaintiff alleges that the County is the MV Defendants'
28 employer and appears to assume that as such, the County is liable

1 for the MV Defendants' actions.⁵ (Compl. at 2). This claim fails
2 because a local governmental entity is not liable under § 1983
3 simply because its employees violated a plaintiff's rights.

4
5 A municipality may be held liable under § 1983 only for
6 constitutional violations that are the result of an official
7 government policy or custom. Collins v. City of Harker Heights,
8 Tex., 503 U.S. 115, 121 (1992); Monell v. Dep't of Soc. Servs. of
9 City of New York, 436 U.S. 658, 694 (1978); see also Pembaur v.
10 City of Cincinnati, 475 U.S. 469, 483 (1986) (extending Monell's
11 analysis of municipal liability to counties). To assert a valid
12 § 1983 claim against the County, Plaintiff must show both a
13 violation of his constitutional rights and a departmental policy,
14 custom or practice that was the "moving force" behind the
15 constitutional violation. Villegas v. Gilroy Garlic Festival
16 Ass'n, 541 F.3d 950, 957 (9th Cir. 2008). There must be a "direct
17 causal link between a [County] policy or custom and the alleged
18

19 ⁵ As previously noted, "[t]he City of Moreno Valley contracts police
20 services from the Riverside County Sheriff's Department." (See
21 [http://www.moreno-valley.ca.us/city_hall/departments/police/](http://www.moreno-valley.ca.us/city_hall/departments/police/index-police.shtml)
22 [index-police.shtml](http://www.moreno-valley.ca.us/city_hall/departments/police/index-police.shtml)). The Complaint does not allege sufficient
23 facts for the Court to determine whether the County, or the City,
24 or both, bore responsibility for the training and supervision of
25 the MV Defendants when they provided services for the City of
26 Moreno Valley. See, e.g., Boarman v. Cnty. of Sacramento, 55 F.
27 Supp. 3d 1271, 1287 (E.D. Cal. 2014) (city entitled to summary
28 judgment in civil rights action where evidence showed that "the
City has no part in setting policy for or training the sheriff's
deputies who act as City police officers" and "the County provided
training to [defendant officers] and . . . established policies
regarding detentions, arrests, and the use of force"). For present
purposes, the Court will simply assume, without deciding, that the
MV Defendants were County employees, as Plaintiff alleges, when
performing the acts at issue in the Complaint.

1 constitutional deprivation.'" Id. (quoting City of Canton v.
2 Harris, 489 U.S. 378, 385 (1989)). Proof of a single incident of
3 unconstitutional activity, or even a series of 'isolated and
4 sporadic incidents,'" will not impose liability under § 1983. Gant
5 v. Cnty. of Los Angeles, 772 F.3d 608, 618 (9th Cir. 2014) (quoting
6 Okla. City v. Tuttle, 471 U.S. 808, 823-24 (1985)). Rather,
7 liability must be "founded upon practices of sufficient duration,
8 frequency and consistency that the conduct has become a traditional
9 method of carrying out policy." Trevino v. Gates, 99 F.3d 911,
10 918 (9th Cir. 1996).

11
12 Plaintiff does not identify a policy, custom or practice that
13 led to his alleged injuries. The single incident Plaintiff alleges
14 is not enough to establish the existence of such a policy. As a
15 result, Plaintiff fails to state a valid Monell claim against the
16 County. Accordingly, the Complaint is dismissed, with leave to
17 amend.

18
19 **C. The Complaint Fails To State A Civil Rights Claim Against**
20 **Walgreens**

21
22 It is unclear exactly what Plaintiff believes Walgreens did
23 to violate his constitutional rights. The Complaint's only
24 allegation involving Walgreens is that it was the store where he
25 had been waiting in line when the incident took place. (Compl. at
26 3). This sparse allegation would fail to state a civil rights
27 claim regardless of the status of the defendant. However, any
28 claims under § 1983 against Walgreens fail for the additional

1 reason that on the facts alleged, Walgreens does not qualify as a
2 state actor.

3
4 To state a claim under section 1983, a plaintiff must allege
5 that the deprivation of a right secured by the federal constitution
6 or statutory law was committed by a person acting under color of
7 state law. Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir.
8 2006). "While generally not applicable to private parties, a
9 § 1983 action can lie against a private party when he is a willful
10 participant in joint action with the State or its agents." Kirtley
11 v. Rainey, 326 F.3d 1088, 1092 (9th Cir. 2003).

12
13 The Ninth Circuit has identified four circumstances under
14 which a private person may be deemed to be acting under color of
15 state law. Under the "public function" test, "when private
16 individuals or groups are endowed by the State with powers or
17 functions governmental in nature, they become agencies or
18 instrumentalities of the State and subject to its constitutional
19 limitations." Id. at 1093 (quoting Lee v. Katz, 276 F.3d 550, 554-
20 55 (9th Cir. 2002)). Under the "joint action test," a court will
21 consider whether "the state has so far insinuated itself into a
22 position of interdependence with the private entity that it must
23 be recognized as a joint participant in the challenged activity"
24 and "knowingly accepts the benefits derived from unconstitutional
25 behavior." Kirtley, 326 F.3d at 1093 (quoting Parks Sch. of Bus.,
26 Inc. v. Symington, 51 F.3d 1480, 1486 (9th Cir. 1995)). Under the
27 "governmental coercion or compulsion" test, the court considers
28 "whether the coercive influence or 'significant encouragement' of

1 the state effectively converts a private action into a government
2 action." Kirtley, 326 F.3d at 1094 (quoting Sutton v. Providence
3 St. Joseph Medical Center, 192 F.3d 826, 836-37 (9th Cir. 1999)).
4 Finally, under the "government nexus" test, the court asks whether
5 "there is such a close nexus between the State and the challenged
6 action that the seemingly private behavior may be fairly treated
7 as that of the State itself." Kirtley, 326 F.3d at 1095 (quoting
8 Brentwood Academy v. Tennessee Secondary School Athletic Ass'n,
9 531 U.S. 288, 295 (2001)).

10
11 Walgreens is a private retail establishment. No facts are
12 alleged, and it is highly doubtful that any could be, that show
13 that Walgreens should be considered a state actor under either the
14 "public function," "joint action," "governmental coercion or
15 compulsion," or "government nexus" tests. See Stanley v. Goodwin,
16 475 F. Supp. 2d 1026, 1038 (D. Haw. 2006) (no basis for assuming
17 that Sears is a state actor). Accordingly, the claim against
18 Walgreens is dismissed. Plaintiff is cautioned that to the extent
19 he wishes to pursue a civil rights claim under § 1983, he should
20 not name any Defendant in any future amended complaint that cannot
21 be deemed to have been acting under color of state law.

22
23 **D. The Complaint Fails To State A Claim Against RUHS**

24
25 The claims against RUHS similarly do not state a civil rights
26 claim. The only allegations involving RUHS are that it was the
27 institution where: (1) Plaintiff was taken for medical treatment
28 after the incident, and (2) "missing medical records were lost."

1 (Id. at 2). Plaintiff does not suggest in any way that the medical
2 care he received at RUHS violated his constitutional rights. Nor
3 does he explain what medical care records were lost, how this loss
4 harmed him, or what constitutional right the loss violated.
5 Plaintiff is cautioned that the "'mere lack of due care by a state
6 official' does not deprive an individual of life, liberty, or
7 property under the Fourteenth Amendment." Gordon v. County of
8 Orange, 888 F.3d 1118, 1125 (9th Cir. 2018) (quoting Graham v.
9 Connor, 490 U.S. 386, 396 (1989)). Therefore, a pretrial detainee,
10 such as Plaintiff, complaining of inadequate medical care while in
11 custody must "prove more than negligence but less than subjective
12 intent -- something akin to reckless disregard." Id. Simple
13 negligence does not constitute a viable claim under § 1983.

14
15 Furthermore, even if Plaintiff had stated a cognizable
16 substantive claim for any acts that occurred at RUHS, which he did
17 not, RUHS is still an improper Defendant because it appears to be
18 a County-run entity. As noted above, a § 1983 claim will lie
19 against a local governmental entity, such a city or county. Monell,
20 436 U.S. at 690 n.54; Pembaur, 475 U.S. at 483. However, a
21 department, agency or unit of a local government is an improper
22 defendant. See Hervey v. Estes, 65 F.3d 784, 701 (9th Cir. 1995)
23 (police narcotics task force not a "person" or entity subject to
24 suit under section 1983). Because RUHS appears to be a subdivision
25 of the County, claims for events that occurred at RUHS involving
26 RUHS employees, if any, should be brought against the County
27 itself. Accordingly, the Complaint is dismissed, with leave to
28 amend.

1 **E. The Claims Against The MV Defendants In Their "Official**
2 **Capacity" Are Duplicative Of The Claims Against The County**
3

4 The Complaint purports to sue "each Defendant" in both their
5 individual and official capacities. (Compl. at 2-3). The Court
6 presumes that in specifying the capacities in which the claims are
7 brought, Plaintiff is referring to the MV Defendants only, as "the
8 distinction between individual and official capacity does not apply
9 in the case of a direct suit against a government entity"
10 Wade v. City of Los Angeles, 2012 WL 2088696, at *3 (C.D. Cal. June
11 8, 2012) (internal quotation marks and citation omitted).

12
13 As to the MV Defendants themselves, a suit against a defendant
14 in his individual capacity "seek[s] to impose personal liability
15 upon a government official for actions he takes under color of
16 state law. . . . Official-capacity suits, in contrast, generally
17 represent only another way of pleading an action against an entity
18 of which an officer is an agent." Kentucky v. Graham, 473 U.S.
19 159, 165 (1985) (internal quotation marks omitted); see also
20 Community House, Inc. v. City of Boise, Idaho, 623 F.3d 945, 966-
21 67 (9th Cir. 2010) (an official capacity suit is treated as a suit
22 against the entity). To the extent that the MV Defendants are
23 properly deemed County employees when providing services for the
24 City of Moreno Valley, as the Complaint alleges, official capacity
25 claims against the MV Defendants are simply another way of stating
26 a claim against the County. Such duplicative claims are subject
27 to dismissal. See Center for Bio-Ethical Reform, Inc. v. Los
28 Angeles Cnty. Sheriff Dep't, 533 F.3d 780, 799 (9th Cir. 2008)

1 ("When both a municipal officer and a local government entity are
2 named, and the officer is named only in an official capacity, the
3 court may dismiss the officer as a redundant defendant.").
4 Accordingly, the Complaint is dismissed, with leave to amend.

5
6 **F. The Complaint Fails To Satisfy Federal Rule of Civil**
7 **Procedure 8**

8
9 Federal Rule of Civil Procedure 8(a)(2) requires that a
10 complaint contain "'a short and plain statement of the claim
11 showing that the pleader is entitled to relief,' in order to 'give
12 the defendant fair notice of what the . . . claim is and the grounds
13 upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S.
14 544, 555 (2007). Rule 8(e)(1) instructs that "[e]ach averment of
15 a pleading shall be simple, concise, and direct." A complaint
16 violates Rule 8 if a defendant would have difficulty responding to
17 the claims. Cafasso, U.S. ex rel. v. General Dynamics C4 Systems,
18 Inc., 637 F.3d 1047, 1059 (9th Cir. 2011).

19
20 Plaintiff's Complaint does not comply with the standards of
21 Rule 8. The only claim Plaintiff appears to be asserting is for
22 excessive force. "[A]ll claims that law enforcement officers have
23 used excessive force . . . in the course of an arrest, investigatory
24 stop, or other seizure of a free citizen should be analyzed under
25 the Fourth Amendment and its reasonableness standard." Hooper v.
26 Cnty. of San Diego, 629 F.3d 1127, 1133 (9th Cir. 2011). To state
27 a Fourth Amendment excessive force claim, a plaintiff must allege
28 both that he was "seized" and that the seizure was effected with

1 unreasonable force. See Brower v. Cnty. of Inyo, 489 U.S. 593,
2 599 (1989) ("‘Seizure’ alone is not enough for § 1983 liability;
3 the seizure must be ‘unreasonable.’"). "Force is excessive when
4 it is greater than is reasonable under the circumstances." Santos
5 v. Gates, 287 F.3d 846, 854 (9th Cir. 2002).

6
7 On the facts alleged, the Complaint does not explain how
8 Plaintiff’s stay at RUHS would give rise to a claim of excessive
9 force. As to Deputy Macias, Exhibit C to the Complaint states that
10 he was wounded by Plaintiff during the incident. The Complaint
11 therefore does not show that whatever force Deputy Macias may have
12 used was excessive. In sum, the Complaint’s vague allegations fail
13 to identify the nature of each claim Plaintiff is bringing, the
14 specific Defendant (or Defendants) against whom he is bringing each
15 claim, and what each Defendant separately did to violate his
16 constitutional rights. The Complaint therefore fails to provide
17 Defendants with fair notice of the claims in a short, clear and
18 concise statement. See Twombly, 550 U.S. at 555. Furthermore,
19 the prayer for punitive damages as applied to the County is
20 defective because the Supreme Court has plainly held that "a
21 municipality is immune from punitive damages under 42 U.S.C.
22 § 1983." City of Newport v. Fact Concerts, Inc., 453 U.S. 247,
23 272 (1981). Accordingly, the Complaint is dismissed, with leave
24 to amend.

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1 IV.

2 CONCLUSION

3
4 For the reasons stated above, the Complaint is dismissed with
5 leave to amend. If Plaintiff still wishes to pursue this action,
6 he is granted **thirty (30) days** from the date of this Memorandum
7 and Order within which to file a First Amended Complaint. In any
8 amended complaint, Plaintiff shall **cure the defects** described
9 above. **Plaintiff shall not include new defendants or new**
10 **allegations that are not reasonably related to the claims asserted**
11 **in the original Complaint.** The First Amended Complaint, if any,
12 shall be complete in itself and shall bear both the designation
13 "First Amended Complaint" and the case number assigned to this
14 action. It shall not refer in any manner to the original Complaint.
15 Plaintiff shall limit his action to only those Defendants who are
16 properly named in such a complaint, consistent with the authorities
17 discussed above.

18
19 In any amended complaint, Plaintiff should confine his
20 allegations to those operative facts supporting each of his claims.
21 Plaintiff is advised that pursuant to Federal Rule of Civil
22 Procedure 8(a), all that is required is a "short and plain statement
23 of the claim showing that the pleader is entitled to relief."
24 **Plaintiff is strongly encouraged to utilize the standard civil**
25 **rights complaint form when filing any amended complaint, a copy of**
26 **which is attached.** In any amended complaint, Plaintiff should make
27 clear the nature and grounds for each claim and specifically
28 identify the Defendants he maintains are liable for that claim.

1 Plaintiff shall not assert any claims for which he cannot allege a
2 proper factual basis.

3
4 Plaintiff is explicitly cautioned that the failure to timely
5 file a First Amended Complaint, or to correct the deficiencies
6 described above, will result in a recommendation that this action
7 be dismissed with prejudice for failure to prosecute and obey Court
8 orders pursuant to Federal Rule of Civil Procedure 41(b).
9 Plaintiff is further advised that if he no longer wish to pursue
10 this action, he may voluntarily dismiss it by filing a Notice of
11 Dismissal in accordance with Federal Rule of Civil Procedure
12 41(a)(1). A form Notice of Dismissal is attached for Plaintiff's
13 convenience.

14
15 DATED: November 2, 2018

16 /S/
17 SUZANNE H. SEGAL
18 UNITED STATES MAGISTRATE JUDGE

19 THIS MEMORANDUM IS NOT INTENDED FOR PUBLICATION NOR IS IT INTENDED
20 TO BE INCLUDED IN OR SUBMITTED TO ANY ONLINE SERVICE SUCH AS WESTLAW
21 OR LEXIS.